

FCC MAIL SECTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FCC 99-44

DISPATCHED BY

In the Matter of)

Assessment and Collection)
 of Regulatory Fees for)
 Fiscal Year 1999)

MD Docket No. 98-200

NOTICE OF PROPOSED RULEMAKING**Adopted:** March 9, 1999**; Released:** March 24, 1999

By the Commission:

Comment Date: April 19, 1999

Reply Comment Date: April 29, 1999

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I. Introduction

1. By this Notice of Proposed Rulemaking, the Commission commences a proceeding to revise its Schedule of Regulatory Fees in order to collect the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required it to collect for Fiscal Year (FY) 1999.¹
2. Congress has required that we collect \$172,523,000 through regulatory fees in order to recover the costs of our enforcement, policy and rulemaking, international and user information activities for FY 1999.² This amount is \$10,000,000 or approximately 6% more than the amount that Congress designated for recovery through regulatory fees for FY 1998.³ Thus, we are proposing to revise our fees in order to collect the increased amount that Congress has required that we collect. Additionally, we propose to amend the Schedule in order to simplify and streamline it.⁴
3. In proposing to revise our fees, we adjusted the payment units and revenue requirement for each service subject to a fee, consistent with sections 159(b)(2) and (3). In addition, we are proposing changes to the fees pursuant to public interest considerations. The current Schedule of Regulatory Fees is set forth in sections 1.1152 through 1.1156 of the Commission's rules.⁵

II. Background

4. Section 9(a) of the Communications Act of 1934, as amended, authorizes the Commission to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, that it incurs in carrying out enforcement, policy and rulemaking, international, and user information activities.⁶ See Attachment G for a description of these activities. In our FY 1994 Fee Order,⁷ we adopted the Schedule of Regulatory Fees that Congress established.

¹ 47 U.S.C. 159 (a).

² Public Law 105-277 and 47 U.S.C. 159(a)(2).

³ Assessment and Collection of Regulatory Fees for Fiscal Year 1998, FCC 98-115, released June 16, 1998, 63 FR 35847 (Jul. 1, 1998).

⁴ 47 U.S.C. 159(b)(3).

⁵ 47 CFR 1.1152 through 1.1156.

⁶ 47 U.S.C. 159(a).

⁷ 59 FR 30984 (Jun. 16, 1994).

and we prescribed rules to govern payment of the fees, as required by Congress.⁸ Subsequently, we modified the fee Schedule to increase the fees in accordance with the amounts Congress required us to collect in each succeeding fiscal year. We also amended the rules governing our regulatory fee program based upon our experience administering the program in prior years.⁹

5. As noted above, for FY 1994 we adopted the Schedule of Regulatory Fees established in section 9(g) of the Act. For fiscal years after FY 1994, however, sections 9(b)(2) and (3), respectively, provide for "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.¹⁰ Section 9(b)(2), entitled "Mandatory Adjustments," requires that we revise the Schedule of Regulatory Fees whenever Congress changes the amount that we are to recover through regulatory fees.¹¹

6. Section 9(b)(3), entitled "Permitted Amendments," requires that we determine annually whether additional adjustments to the fees are warranted, taking into account factors that are reasonably related to the payer of the fee and factors that are in the public interest. In making these amendments, we are to "add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services."¹²

7. Section 9(i) requires that we develop accounting systems necessary to adjust our fees pursuant to changes in the costs of regulation of various services that are subject to a fee, and for other purposes.¹³ For FY 1997, we relied for the first time on cost accounting data to identify our regulatory costs and to develop our FY 1997 fees based upon these costs. Also, for FY 1997, we limited the increase in the amount of the fee for any service in order to phase in our reliance on cost-based fees for those services whose revenue requirement would be more than 25 percent above the revenue requirement which would have resulted from the "mandatory adjustments" to the FY 1997 fees without incorporation of costs. This methodology, which we continued to utilize for FY 1998, enabled us to develop regulatory fees which we believed to be more reflective of our costs of regulation, and allowed us to make revisions to our fees based on the fullest extent possible, and consistent with the public interest, on the actual costs of regulating those services subject to a fee. Finally, section 9(b)(4)(B) requires that we notify Congress of any permitted amendments 90 days before those amendments go into effect.¹⁴

⁸ 47 U.S.C. 159(b), (f)(1).

⁹ 47 CFR 1.1151 et seq.

¹⁰ 47 U.S.C. 159(b)(2), (b)(3).

¹¹ 47 U.S.C. 159(b)(2).

¹² 47 U.S.C. 159(b)(3).

¹³ 47 U.S.C. 159(i).

¹⁴ 47 U.S.C. 159(b)(4)(B).

III. Discussion

A. Summary of FY 1999 Fee Methodology

8. As noted above, Congress has required that the Commission recover \$172,523,000 for FY 1999 through the collection of regulatory fees, representing the costs applicable to our enforcement, policy and rulemaking, international, and user information activities.¹⁵

9. In developing our proposed FY 1999 fee schedule, we first determined that we would continue to use the same general methodology for "Mandatory Adjustments" to the Fee Schedule as we used in developing fees for FY 1998. We estimated the number of payment units¹⁶ for FY 1999 in order to determine the aggregate amount of revenue we would collect without any revision to our FY 1998 fees. Next, we compared this revenue amount to the \$172,523,000 that Congress has required us to collect in FY 1999 and pro-rated the difference among all the existing fee categories.

10. Once we established our tentative FY 1999 fees, we evaluated proposals made by Commission staff concerning "Permitted Amendments" to the Fee Schedule and to our collection procedures. These proposals are discussed in paragraphs 15-19 and are factored into our proposed FY 1999 Schedule of Regulatory Fees, set forth in Attachment D.

11. Finally, we have incorporated, as Attachment F, proposed Guidance containing detailed descriptions of each fee category, information on the individual or entity responsible for paying a particular fee and other critical information designed to assist potential fee payers in determining the extent of their fee liability, if any, for FY 1999.¹⁷ In the following paragraphs, we describe in greater detail our proposed methodology for establishing our FY 1999 regulatory fees.

¹⁵ 47 U.S.C. 159(a).

¹⁶ Payment units are the number of subscribers, mobile units, pagers, cellular telephones, licenses, call signs, adjusted gross revenue dollars, etc. which represent the base volumes against which fee amounts are calculated.

¹⁷ We also will incorporate a similar Attachment in the Report and Order concluding this rulemaking. That Attachment will contain updated information concerning any changes made to the proposed fees adopted by the Report and Order.

B. Development of FY 1999 Fees

i. Adjustment of Payment Units

12. In calculating individual service regulatory fees for FY 1999, we adjusted the estimated payment units for each service because payment units for many services have changed substantially since we adopted our FY 1998 fees. We obtained our estimated payment units through a variety of means, including our licensee data bases, actual prior year payment records, and industry and trade group projections. Whenever possible, we verified these estimates from multiple sources to ensure the accuracy of these estimates. Attachment B provides a summary of how revised payment units were determined for each fee category.¹⁸

ii. Calculation of Revenue requirements

13. We next multiplied the revised payment units for each service by the FY 1998 fees in each category to determine how much revenue we would collect without any change to the FY 1998 Schedule of Regulatory Fees. The amount of revenue which we would collect without changes to the Fee Schedule is approximately \$157.6 million. This amount is approximately \$14.9 million less than the amount the Commission is required to collect in FY 1999. We then adjusted the revenue requirements for each category on a proportional basis, consistent with Section 9(b)(2) of the Act, to obtain an estimate of the revenue requirements for each fee category so that the Commission could collect \$172,523,000 as required by Congress. Attachment C provides detailed calculations showing how we determined the revised revenue amounts to be raised for each service.

iii. Recalculation of Fees

14. Once we determined the amount of fee revenue that it is necessary to collect from each class of licensee, we divided the revenue requirement by the number of payment units (and by the license term, if applicable, for "small" fees) to obtain actual fee amounts for each fee category. These calculated fee amounts were then rounded in accordance with section 9(b)(3) of the Act. See Attachment C.

¹⁸ It is important to also note that Congress' required revenue increase in regulatory fee payments of approximately six percent in FY 1999 will not fall equally on all payers because payment units have changed in several services. When the number of payment units in a service increase from one year to another, fees do not have to rise as much as they would if payment units had decreased or remained stable. Declining payment units have the opposite effect on fees.

iv. Proposed Changes to Fee Schedule

15. We examined the results of our calculations to determine if further adjustments of the fees and/or changes to payment procedures were warranted based upon the public interest and other criteria established in 47 U.S.C. 159(b)(3).¹⁹ As a result of this review, we are proposing the following "Permitted Amendments" to our Fee Schedule:

a. FY 1999 Fee Schedule to Be Based on Mandatory Adjustments

16. We are proposing that the FY 1999 fee schedule be based on the mandatory adjustments as computed in Attachment C and in accordance with section 9(b)(2) of the Act.

b. Reduction of the FM Construction Permit Fee

17. In the original Congressional fee schedule, the FM Construction Permit fee was set at \$500 (Five times the AM Construction Permit Fee of \$100). In succeeding year's schedules, nearly the same relationship has prevailed as evidenced by the calculated FM Construction Permit fee for FY 1999 of \$1,250 (compared to the calculated AM Construction Permit fee for FY 1999 of \$255).

18. Several parties have informally expressed concern that the FM Construction Permit fee is out of proportion in relation to the fees imposed on licensed FM stations particularly in less populated areas. At the same time, it should be noted that the regulatory costs borne by the Commission applicable to FM Construction Permits is significantly higher than its costs for AM Construction Permits.

19. We seek comment on a staff proposal to make a permitted amendment to the schedule of regulatory fees for FY 1999 reducing the FM Construction Permit fee to \$765 (three times the AM Construction Permit fee). This reduction would result in a loss of \$145,500 in estimated regulatory fee collections.

v. Effect of Revenue Redistributions on Major Constituencies

20. The following chart illustrates the relative percentage of the overall revenue requirements borne by the major constituencies since the inception of regulatory fees in FY 1994.

¹⁹ In FY 1997 and FY 1998 we limited increases to 25%. For FY 1999, none of the proposed fee increases exceed 25%.

PERCENTAGE OF REVENUE COLLECTED BY CONSTITUENCY						
	FY 1994 (Actual)	FY 1995 (Actual)	FY 1996 (Actual)	FY 1997 (Actual)	FY 1998 (Actual)	FY 1999 (Proposed)
Cable TV Operators (Inc. CARS Licenses)	41.4	24.0	33.4	21.8	17.9	17.9
Broadcast Licensees	23.8	13.8	14.6	14.1	15.6	15.4
Satellite Operators (Inc. Earth Stations)	3.3	3.6	4.0	5.0	5.3	5.6
Common Carriers	25.0	44.5	40.9	49.8	47.5	47.1
Wireless Licensees	6.5	14.1	7.1	9.3	13.7	14.0
TOTAL	100.0	100.0	100.0	100.0	100.0	100.0

C. Notice of Inquiry Issues

21. On November 10, 1998, the Commission adopted a Notice of Inquiry in this proceeding seeking comments on five specific issues.²⁰ Briefly, the issues for which comments were sought included: (1) clarification of the Commercial Mobile Radio Services ("CMRS") fee categories and demarcation of which types of services or usage to include in each category;²¹ (2) determination of the appropriate basis for assessing regulatory fees on geostationary orbit space stations ("GSOs"); (3) determination of the appropriate method of assessing our regulatory costs associated with non-geostationary orbit space station systems ("NGSOs") to licensees which have launched satellites or to all NGSO licensees; (4) whether we should base revenues for interstate telephone service providers on the Universal Services Fund's end user methodology rather than the Telecommunication Relay Services Fund adjusted gross revenue

²⁰ 63 FR 70090 (Dec. 18, 1998).

²¹ In this regard we specifically request additional comments on a proposal raised by BellSouth Wireless in its Petitions for Reconsideration of the FY 1997 and FY 1998 Rulemakings, that the Commission reclassify 900 MHz SMR Service into the CMRS Message Service.

methodology; and (5) whether we should create a "new services" category in our cost accounting system in which costs associated with development of new services, regardless of the service, would be proportionately assessed to all feeable categories rather than assessed to existing licensees in the same service category.

22. In the interest of expediting this NPRM, we are deferring analysis of the comments and replies received pursuant to the NOI for inclusion in the final Report and Order in this proceeding. Commenters do not need to resubmit these same arguments in response to this NPRM. Further, the basis for assessing revenues for interstate telephone service providers is best delayed until the conclusion of CC Docket No. 98-171, In the Matter of 1998 biennial Regulatory Review--Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service support Mechanisms.²²

D. Procedures for Payment of Regulatory Fees

23. Generally, we propose to retain the procedures that we have established for the payment of regulatory fees. Section 9(f) requires that we permit "payment by installments in the case of fees in large amounts, and in the case of small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payer." See 47 U.S.C. § 159(f)(1). Consistent with section 9(f), we are again proposing to establish three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. The fee categories are (1) "standard" fees, (2) "large" fees, and (3) "small" fees.

i. Annual Payments of Standard Fees

24. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "standard fees" which are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term and are not eligible for installment payments. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced either in the Report and Order terminating this proceeding or by public notice in the Federal Register pursuant to authority delegated to the Managing Director.

ii. Installment Payments for Large Fees

25. While we are mindful that time constraints may preclude an opportunity for installment payments, we propose that regulatees in any category of service with a liability of \$12,000 or more be eligible to make installment payments and that eligibility for installment payments be

²² FCC 98-233, released September 25, 1998, 63 FR 54090 (Oct. 8, 1998).

based upon the amount of either a single regulatory fee payment or combination of fee payments by the same licensee or regulatee. We propose that regulatees eligible to make installment payments may submit their required fees in two equal payments (on dates to be announced) or, in the alternative, in a single payment on the date that their final installment payment is due. Due to statutory constraints concerning notification to Congress prior to actual collection of the fees, however, it is unlikely that there will be sufficient time for installment payments, and that regulatees eligible to make installment payments will be required to pay these fees on the last date that fee payments may be submitted. The dates for installment payments, or a single payment, will be announced either in the Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iii. Advance Payments of Small Fees

26. As we have in the past, we are proposing to treat regulatory fee payments by certain licensees as "small" fees subject to advance payment consistent with the requirements of section 9(f)(2). We propose that advance payments will be required from licensees of those services that we decided would be subject to advance payments in our FY 1994 Report and Order, and to those additional payers set forth herein.²³ We are also proposing that payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, renewal, or reinstatement application. Regulatees subject to a payment of small fees shall pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. In the event that the required fee is adjusted following their payment of the fee, the payer would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. The effective date for payment of small fees established in this proceeding will be announced in our Report and Order terminating this proceeding or by public notice published in the Federal Register pursuant to authority delegated to the Managing Director.

iv. Minimum Fee Payment Liability

27. As we have in the past, we are proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than \$10 will be exempted from fee payment in FY 1999.

²³ Applicants for new, renewal and reinstatement licenses in the following services will be required to pay their regulatory fees in advance: Land Mobile Services, Microwave Services, Marine (Ship) Service, Marine (Coast) Service, Private Land Mobile (Other) Services, Aviation (Aircraft) Service, Aviation (Ground) Service, General Mobile Radio Service (GMRS).

v. Standard Fee Calculations and Payment Dates

28. As noted, the time for payment of standard fees and any installment payments will be announced in our Report and Order terminating this proceeding or will be published in the Federal Register pursuant to authority delegated to the Managing Director. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services whose fees are not based on a subscriber, unit, or circuit count, we are proposing that fees be paid for any authorization issued on or before October 1, 1998.²⁴

29. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatees' subscribers, units or circuits on December 31, 1998, will be used to calculate the fee payment.²⁵

E. Schedule of Regulatory Fees

30. The Commission's proposed Schedule of Regulatory Fees for FY 1999 is contained in Attachment D of this NPRM.

IV. Procedural Matters

A. Comment Period and Procedures

31. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 19, 1999, and reply comments on or before April 29, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.²⁶

32. Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. However, if multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must transmit one electronic copy of the comments to each

²⁴ Where a license or authorization is transferred or assigned after October 1, 1998, the fee shall be paid by the licensee or holder of the authorization on the date that the payment is due.

²⁵ Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 1998, rather than on a count as of December 31, 1998.

²⁶ Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail via Internet. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message. "get form <your e-mail address." A sample form and directions will be sent in reply.

33. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554.

34. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Terry Johnson, Office of Managing Director, Federal Communications Commission, 445 12th Street, S.W., 1-C807, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using WordPerfect 5.1 for Windows or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labelled with the commenter's name, proceeding (including the lead docket number in this case MD Docket No. 98-200, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy - Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

35. Documents filed in this proceeding will be available for public inspection during regular business hours in the FCC Reference Center, of the Federal Communications Commission, Room CY-A257, 445 12th Street, S.W., Washington, D. C. 20554, and will be placed on the Commission's "Internet site."

B. Ex Parte Rules

36. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.²⁷

²⁷ 47 CFR 1.1202, 1.1203 and 1026(a).

C. Initial Regulatory Flexibility Analysis

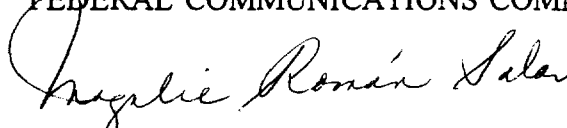
37. As required by the Regulatory Flexibility Act,²⁸ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, but they must have a separate and distinct heading, designating the comments as responses to the IRFA. The Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

D. Authority and Further Information

38. Authority for this proceeding is contained in sections 4(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.²⁹ It is ordered that this NPRM is adopted. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

39. Further information about this proceeding may be obtained by contacting the Fees Hotline at (202) 418-0192.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

²⁸ 5 U.S.C. 603.

²⁹ 47 U.S.C. 154(i)-(j), 159, & 303(r).

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act (RFA),³⁰ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the present Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1999. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided above in paragraph 31. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.³¹ In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.³²

I. Need for, and Objectives of, the Proposed Rules:

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees. For Fiscal Year 1999, we intend to collect regulatory fees in the amount of \$172,523,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed revised fees, as contained in the attached Schedule of Regulatory Fees, in the most efficient manner possible and without undue burden to the public.

II. Legal Basis:

3. This action, including publication of proposed rules, is authorized under Sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.³³

³⁰ 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³¹ 5 U.S.C. 603(a).

³² *Id.*

³³ 47 U.S.C. 154(i) and (j), 159, and 303(r).

III. Description and Estimate of the Number of Small Entities to which the Proposed Rules Will Apply:

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.³⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."³⁵ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.³⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).³⁷ A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."³⁸ Nationwide, as of 1992, there were approximately 275,801 small organizations.³⁹ "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."⁴⁰ As of 1992, there were approximately 85,006 such jurisdictions in the United States.⁴¹ This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.⁴² The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

³⁴ 5 U.S.C. 603(b)(3).

³⁵ *Id.* 601(6).

³⁶ 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. 601(3).

³⁷ Small Business Act, 15 U.S.C. 632 (1996).

³⁸ 5 U.S.C. 601(4).

³⁹ 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

⁴⁰ 5 U.S.C. 601(5).

⁴¹ U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

⁴² *Id.*

CABLE SERVICES OR SYSTEMS

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating \$11 million or less in revenue annually.⁴³ This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than \$11 million in revenue.⁴⁴

6. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.⁴⁵ Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.⁴⁶ Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."⁴⁷ The Commission has determined that there are 66,000,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 660,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.⁴⁸ Based on available data, we

⁴³ 13 CFR 121.201, SIC code 4841.

⁴⁴ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4841 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

⁴⁵ 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of \$100 million or less. Implementation of Sections of the 1992 Cable Act: Rate Regulation. Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

⁴⁶ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁴⁷ 47 U.S.C. 543(m)(2).

⁴⁸ Id. 76.1403(b).

find that the number of cable operators serving 660,000 subscribers or less totals 1,450.⁴⁹ We do not request nor do we collect information concerning whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250,000,000,⁵⁰ and thus are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers, and we have based our fee revenue estimates on that figure.

8. Other Pay Services. Other pay television services are also classified under Standard Industrial Classification (SIC) 4841, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),⁵¹ multipoint distribution systems (MDS),⁵² satellite master antenna systems (SMATV), and subscription television services.

COMMON CARRIER SERVICES AND RELATED ENTITIES

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS).⁵³ According to data in the most recent report, there are 3,459 interstate carriers.⁵⁴ These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.

⁴⁹ Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

⁵⁰ We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.1403(b) of the Commission's rules. See 47 CFR 76.1403(d).

⁵¹ Direct Broadcast Services (DBS) are discussed with the international services, infra.

⁵² Multipoint Distribution Services (MDS) are discussed with the mass media services, infra.

⁵³ FCC, Telecommunications Industry Revenue: TRS Fund Worksheet Data, Figure 2 (Number of Carriers Paying Into the TRS Fund by Type of Carrier) (Nov. 1997) (Telecommunications Industry Revenue).

⁵⁴ Id.

10. The SBA has defined establishments engaged in providing "Radiotelephone Communications" and "Telephone Communications, Except Radiotelephone" to be small businesses when they have no more than 1,500 employees.⁵⁵ Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

11. Although some affected incumbent local exchange carriers (ILECs) may have 1,500 or fewer employees, we do not believe that such entities should be considered small entities within the meaning of the RFA because they are either dominant in their field of operations or are not independently owned and operated, and therefore by definition not "small entities" or "small business concerns" under the RFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass small ILECs. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, we will separately consider small ILECs within this analysis and use the term "small ILECs" to refer to any ILECs that arguably might be defined by the SBA as "small business concerns."⁵⁶

12. **Total Number of Telephone Companies Affected.** The U.S. Bureau of the Census ("Census Bureau") reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.⁵⁷ This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications services providers, covered specialized mobile radio providers, and resellers. It seems certain that some of those 3,497 telephone service firms may not qualify as small entities or small ILECs because they are not "independently owned and operated."⁵⁸ For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small ILECs that may be affected by the proposed rules, if adopted.

⁵⁵ 13 CFR 121.201, Standard Industrial Classification (SIC) codes 4812 and 4813. See also Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987).

⁵⁶ 13 CFR 121.201, SIC code 4813. Since the time of the Commission's 1996 decision, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996. First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996), 61 FR 45476 (Aug. 29, 1996), the Commission has consistently addressed in its regulatory flexibility analyses the impact of its rules on such ILECs.

⁵⁷ U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1-123 (1995) (1992 Census).

⁵⁸ See generally 15 U.S.C. 632(a)(1).

13. **Wireline Carriers and Service Providers.** The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁵⁹ According to the SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons.⁶⁰ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small ILECs. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone companies are small entities or small ILECs that may be affected by the proposed rules, if adopted.

14. **Local Exchange Carriers.** Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁶¹ According to the most recent Telecommunications Industry Revenue data, 1,371 carriers reported that they were engaged in the provision of local exchange services.⁶² We do not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,371 providers of local exchange service are small entities or small ILECs that may be affected by the proposed rules, if adopted.

15. **Interexchange Carriers.** Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁶³ According to the most recent Telecommunications Industry Revenue data, 143 carriers reported that they

⁵⁹ 1992 Census, *supra*, at Firm Size 1-123.

⁶⁰ 13 CFR 121.201, SIC code 4813.

⁶¹ *Id.*

⁶² Telecommunications Industry Revenue, Figure 2.

⁶³ 13 CFR 121.201, SIC code 4813.

were engaged in the provision of interexchange services.⁶⁴ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXC's that may be affected by the proposed rules, if adopted.

16. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than except radiotelephone (wireless) companies.⁶⁵ According to the most recent Telecommunications Industry Revenue data, 109 carriers reported that they were engaged in the provision of competitive access services.⁶⁶ We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the proposed rules, if adopted.

17. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁶⁷ According to the most recent Telecommunications Industry Revenue data, 27 carriers reported that they were engaged in the provision of operator services.⁶⁸ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 27 small entity operator service providers that may be affected by the proposed rules, if adopted.

⁶⁴ Telecommunications Industry Revenue, Figure 2.

⁶⁵ 13 CFR 121.201, SIC code 4813.

⁶⁶ Telecommunications Industry Revenue, Figure 2.

⁶⁷ 13 CFR 121.201, SIC code 4813.

⁶⁸ Telecommunications Industry Revenue, Figure 2.

18. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.⁶⁹ According to the most recent Telecommunications Industry Revenue data, 441 carriers reported that they were engaged in the provision of pay telephone services.⁷⁰ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 441 small entity pay telephone operators that may be affected by the proposed rules, if adopted.

19. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies.⁷¹ According to the most recent Telecommunications Industry Revenue data, 339 reported that they were engaged in the resale of telephone service.⁷² We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the proposed rules, if adopted.

20. 800 Service Subscribers.⁷³ Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 service ("toll free") subscribers. The most reliable source of information regarding the number of 800 service subscribers appears to be data the Commission collects on the 800 numbers in use.⁷⁴ According to our most recent data, at the end of 1995, the number of 800 numbers in use was 6,987,063. Similarly, the most reliable source of information regarding the number of 888 service subscribers appears to be data

⁶⁹ 13 CFR 121.201, SIC code 4813.

⁷⁰ Telecommunications Industry Revenue, Figure 2.

⁷¹ 13 CFR 121.201, SIC code 4813.

⁷² Telecommunications Industry Revenue, Figure 2.

⁷³ We include all toll-free number subscribers in this category, including 888 numbers.

⁷⁴ FCC, CCB Industry Analysis Division, FCC Releases, Study on Telephone Trends, Tbl. 20 (May 16, 1996).

the Commission collects on the 888 numbers in use.⁷⁵ According to our most recent data, at the end of August 1996, the number of 888 numbers that had been assigned was 2,014,059. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 6,987,063 small entity 800 subscribers and fewer than 2,014,059 small entity 888 subscribers that may be affected by the proposed rules, if adopted.

INTERNATIONAL SERVICES

21. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).⁷⁶ This definition provides that a small entity is expressed as one with \$11.0 million or less in annual receipts.⁷⁷ According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than \$9.999 million.⁷⁸ The Census report does not provide more precise data.

22. **International Broadcast Stations.** Commission records show that there are 20 international broadcast station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition. However, the Commission estimates that only six international broadcast stations are subject to regulatory fee payments.

23. **International Public Fixed Radio (Public and Control Stations).** There are 3 licensees in this service subject to payment of regulatory fees. We do not request nor collect annual revenue information, and thus are unable to estimate the number of international broadcast licensees that would constitute a small business under the SBA definition.

24. **Fixed Satellite Transmit/Receive Earth Stations.** There are approximately 3100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

⁷⁵ FCC, CCB Industry Analysis Division, Long Distance Carrier Code Assignments, p. 80, Tbl. 10B (Oct. 18, 1996).

⁷⁶ An exception is the Direct Broadcast Satellite (DBS) Service, infra.

⁷⁷ 13 CFR 120.121, SIC code 4899.

⁷⁸ 1992 Economic Census Industry and Enterprise Receipts Size Report, Table 2D, SIC code 4899 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

25. **Fixed Satellite Small Transmit/Receive Earth Stations.** There are 3100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations may constitute a small business under the SBA definition.

26. **Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.** These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of VSAT systems that would constitute a small business under the SBA definition.

27. **Mobile Satellite Earth Stations.** There are 11 licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

28. **Radio Determination Satellite Earth Stations.** There are four licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

29. **Space Stations (Geostationary).** Commission records reveal that there are 43 Geostationary Space Station licensees. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of geostationary space stations that would constitute a small business under the SBA definition.

30. **Space Stations (Non-Geostationary).** There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational. We do not request nor collect annual revenue information, and thus are unable to estimate of the number of non-geostationary space stations that would constitute a small business under the SBA definition.

31. **Direct Broadcast Satellites.** Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."⁷⁹ This definition provides that a small entity is one with \$11.0 million or less in annual receipts.⁸⁰ As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, there are several new entrants in this field that may not yet have generated \$11 million in annual receipts, and therefore may be categorized as small businesses, if independently owned and operated.

⁷⁹ 13 CFR 120.121, SIC code 4841.

⁸⁰ 13 CFR 121.201, SIC code 4841.

MASS MEDIA SERVICES

32. **Commercial Radio and Television Services.** The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.⁸¹ The SBA defines a television broadcasting station that has \$10.5 million or less in annual receipts as a small business.⁸² Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.⁸³ Included in this industry are commercial, religious, educational, and other television stations.⁸⁴ Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.⁸⁵ Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.⁸⁶ There were 1,509 television stations operating in the nation in 1992.⁸⁷ That number has remained fairly constant as indicated by the approximately 1,564 operating television broadcasting stations in the nation as of December 31, 1997.⁸⁸ For 1992,⁸⁹ the number of

⁸¹ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this Notice we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this Notice, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. See Report and Order in MM Docket No. 93-48 (Children's Television Programming), 11 FCC Rcd 10660, 10737-38 (1996), 61 FR 43981 (Aug. 27, 1996), citing 5 U.S.C. 601(3).

⁸² 13 CFR 121.201, SIC code 4833.

⁸³ Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size. Series UC92-S-1, Appendix A-9 (1995) (1992 Census, Series UC92-S-1).

⁸⁴ Id.; see Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833) as:

Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

⁸⁵ 1992 Census, Series UC92-S-1, at Appendix A-9.

⁸⁶ Id., SIC code 7812 (Motion Picture and Video Tape Production); SIC code 7922 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

⁸⁷ FCC News Release No. 31327 (Jan. 13, 1993); 1992 Census, Series UC92-S-1, at Appendix A-9.

⁸⁸ FCC News Release, "Broadcast Station Totals as of Dec. 31, 1997."

television stations that produced less than \$10.0 million in revenue was 1,155 establishments.⁹⁰ Only commercial stations are subject to regulatory fees.

33. Additionally, the Small Business Administration defines a radio broadcasting station that has \$5 million or less in annual receipts as a small business.⁹¹ A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.⁹² Included in this industry are commercial, religious, educational, and other radio stations.⁹³ Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.⁹⁴ However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number.⁹⁵ The 1992 Census indicates that 96 percent (5,861 of 6,127) radio station establishments produced less than \$5 million in revenue in 1992.⁹⁶ Official Commission records indicate that 11,334 individual radio stations were operating in 1992.⁹⁷ As of December 31, 1997, Commission records indicate that 12,27 radio stations were operating, of which 7,465 were FM stations.⁹⁸ Only commercial stations are subject to regulatory fees.

34. Thus, the proposed rules, if adopted, will affect approximately 1,558 full power television stations, approximately 1,200 of which are considered small businesses.⁹⁹ Additionally, the proposed rules will affect some 12,156 full power radio stations, approximately 11,670 of

⁸⁹ A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See 1992 Census, Series UC92-S-1, at III.

⁹⁰ The amount of \$10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

⁹¹ 13 CFR 121.201, SIC code 4832.

⁹² 1992 Census, Series UC92-S-1, at Appendix A-9.

⁹³ Id.

⁹⁴ Id.

⁹⁵ Id.

⁹⁶ The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

⁹⁷ FCC News Release, No. 31327 (Jan. 13, 1993).

⁹⁸ FCC News Release, "Broadcast Station Totals as of December 31, 1997."

⁹⁹ We use the 77 percent figure of TV stations operating at less than \$10 million for 1992 and apply it to the 1997 total of 1558 TV stations to arrive at 1,200 stations categorized as small businesses.

which are small businesses.¹⁰⁰ These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 1,952 low power television stations (LPTV).¹⁰¹ Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

Alternative Classification of Small Stations

35. An alternative way to classify small radio and television stations is by number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity Rule (EEO) for broadcasting.¹⁰² Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and record keeping requirements.¹⁰³ We estimate that the total number of broadcast stations with 4 or fewer employees is approximately 4,239.¹⁰⁴

Auxiliary, Special Broadcast and other program distribution services

36. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees.

¹⁰⁰ We use the 96% figure of radio station establishments with less than \$5 million revenue from the Census data and apply it to the 12,088 individual station count to arrive at 11,605 individual stations as small businesses.

¹⁰¹ FCC News Release, No. 7033 (Mar. 6, 1997).

¹⁰² The Commission's definition of a small broadcast station for purposes of applying its EEO rules was adopted prior to the requirement of approval by the SBA pursuant to section 3(a) of the Small Business Act, 15 U.S.C. 632(a), as amended by section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Public Law 102-366, 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Public Law 103-403, 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and the opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970), 35 FR 8925 (Jun. 6, 1970).

¹⁰³ See, e.g., 47 CFR 73.3612 (Requirement to file annual employment reports on Form 395 applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979), 50 FR 50329 (Dec. 10, 1985). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), 61 FR 9964 (Mar. 12, 1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees.

¹⁰⁴ Compilation of 1994 Broadcast Station Annual Employment Reports (FCC Form B), Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

Therefore, the applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.¹⁰⁵

37. There are currently 2,720 FM translators and boosters, 4,952 TV translators.¹⁰⁶ The FCC does not collect financial information on any broadcast facility and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either \$5 million for a radio station or \$10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.¹⁰⁷

38. **Multipoint Distribution Service (MDS).** This service involves a variety of transmitters, which are used to relay programming to the home or office, similar to that provided by cable television systems.¹⁰⁸ In connection with the 1996 MDS auction the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of \$40 million.¹⁰⁹ This definition of a small entity in the context of MDS auctions has been approved by the SBA.¹¹⁰ These stations were licensed prior to implementation of Section 309(j) of the Communications Act of 1934, as amended.¹¹¹ Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas.¹¹² The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 meet the definition of a

¹⁰⁵ 13 CFR 121.201, SIC code 4832.

¹⁰⁶ FCC News Release, Broadcast Station Totals as of December 31, 1996, No. 71831 (Jan. 21, 1997).

¹⁰⁷ 15 U.S.C. 632.

¹⁰⁸ For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) and the Multichannel Multipoint Distribution Service (MMDS).

¹⁰⁹ 47 CFR 1.2110 (a)(1).

¹¹⁰ Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act - Competitive Bidding, 10 FCC Rcd 9589 (1995), 60 FR 36524 (Jul. 17, 1995).

¹¹¹ 47 U.S.C. 309(j).

¹¹² Id. A Basic Trading Area (BTA) is the geographic area by which the Multipoint Distribution Service is licensed. See Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36-39.

small business. There are 1,573 previously authorized and proposed MDS stations currently licensed. Thus, we conclude that there are 1,634 MDS providers that are small businesses as deemed by the SBA and the Commission's auction rules. It is estimated, however, that only 1,650 MDS licensees are subject to regulatory fees and the number which are small businesses is unknown.

WIRELESS AND COMMERCIAL MOBILE SERVICES

39. **Cellular Licensees.** Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹¹³ According to the Bureau of the Census, only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹¹⁴ Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 804 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data.¹¹⁵ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 804 small cellular service carriers that may be affected by the proposed rules, if adopted.

40. **220 MHz Radio Service -- Phase I Licensees.** The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.¹¹⁶ According to the Bureau of the Census, only 12 radiotelephone firms

¹¹³ 13 CFR 121.201, SIC code 4812.

¹¹⁴ 1992 Census, Series UC92-S-1, at Table 5, SIC code 4812.

¹¹⁵ Telecommunications Industry Revenue, Figure 2.

¹¹⁶ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) code 4812.

out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.¹¹⁷ Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

41. 220 MHz Radio Service -- Phase II Licensees. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.¹¹⁸ We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding three years.¹¹⁹ The SBA has approved these definitions.¹²⁰ An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.¹²¹ 908 licenses were auctioned in 3 different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.¹²² A re-auction of the remaining, unsold licenses is likely to take place during calendar year 1999.

42. Private and Common Carrier Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than \$3

¹¹⁷ U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S-1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms; 1992, SIC code 4812 (issued May 1995).

¹¹⁸ 220 MHz Third Report and Order, 12 FCC Rcd 10943, 11068-70, at paras. 291- 295 (1997).

¹¹⁹ 220 MHz Third Report and Order, 12 FCC Rcd at 11068-69, para. 291.

¹²⁰ See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

¹²¹ See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98-36 (Wireless Telecom. Bur. Oct. 23, 1998).

¹²² Public Notice, "FCC Announces It is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment is Made," Report No. AUC-18-H, DA No. 99-229 (Wireless Telecom. Bur. Jan. 22, 1999).

million, or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than \$15 million. Because the SBA has not yet approved this definition for paging services, we will utilize the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.¹²³ At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Telecommunications Industry Revenue data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.¹²⁴ We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by the proposed rules, if adopted. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

43. Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. As noted above in the section concerning paging service carriers, the closest applicable definition under the SBA rules is that for radiotelephone (wireless) companies.¹²⁵ and the most recent Telecommunications Industry Revenue data shows that 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services.¹²⁶ Consequently, we estimate that there are fewer than 172 small mobile service carriers that may be affected by the proposed rules, if adopted.

44. Broadband Personal Communications Service (PCS). The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.¹²⁷ For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more

¹²³ 13 CFR 121.201, SIC code 4812.

¹²⁴ Telecommunications Industry Revenue, Figure 2.

¹²⁵ 13 CFR 121.201, SIC code 4812.

¹²⁶ Telecommunications Industry Revenue, Figure 2.

¹²⁷ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap. Report and Order, FCC 96-278, WT Docket No. 96-59, paras. 57- 60 (released Jun. 24, 1996), 61 FR 33859 (Jul. 1, 1996); see also 47 CFR 24.720(b).

than \$15 million for the preceding three calendar years.¹²⁸ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.¹²⁹ No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.¹³⁰ Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

45. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

46. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.¹³¹ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).¹³² We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.¹³³ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

¹²⁸ See Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, FCC 96-278, WT Docket No. 96-59, para. 60 (1996), 61 FR 33859 (Jul. 1, 1996).

¹²⁹ See, *e.g.*, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order, 9 FCC Rcd 5532, 5581-84 (1994).

¹³⁰ FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (released Jan. 14, 1997).

¹³¹ The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

¹³² BETRS is defined in Sections 22.757 and 22.759 of the Commission's Rules, 47 CFR 22.757 and 22.759.

¹³³ 13 CFR 121.201, SIC code 4812.

47. **Air-Ground Radiotelephone Service.** The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.¹³⁴ Accordingly, we will use the SBA's definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons.¹³⁵ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

48. **Specialized Mobile Radio (SMR).** The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than \$15 million in each of the three previous calendar years.¹³⁶ In the context of 900 MHz SMR, this regulation defining "small entity" has been approved by the SBA; approval concerning 800 MHz SMR is being sought.

49. The proposed fees in the NPRM apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. We assume, for purposes of this IRFA, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA.

50. For geographic area licenses in the 900 MHz SMR band, there are 60 who qualified as small entities. For the 800 MHz SMR's, 38 are small or very small entities.

51. **Private Land Mobile Radio (PLMR).** PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

52. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. However, the Commission's 1994 Annual Report on PLMRs¹³⁷ indicates that at the end of fiscal year 1994 there were 1,087,267 licensees

¹³⁴ The service is defined in Section 22.99 of the Commission's Rules, 47 CFR 22.99.

¹³⁵ 13 CFR 121.201, SIC code 4812.

¹³⁶ 47 CFR 90.814(b)(1).

¹³⁷ Federal Communications Commission, 60th Annual Report, Fiscal Year 1994, at 116.